IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 4192 OF 2007

Muktabai Digambar Shinde .... Petitioner

versus

Kaushalya Ramling Shinde ..... Respondent.

Mr. Manoj Chatage h/f S.D.Dharmadhikari for the petitioner.

CORAM; A.P. DESHPANDE, J.
DATED; 18TH JULY, 2007

P.C.;

1. The present petitioner is the original defendant. One Digambar Shinde and respondent no.5 Indrabai had two sons and three daughters. One of the sons by name Ramling expired. His wife and children have filed a suit for partition and separate possession bearing Civil Suit No. 398/90. The suit has been partly decreed by the trial court. Aggreived by the judgment and decree, the present petitioner has filed regular Civil Appeal before the District Court. In the pending appeal, the petitioner moved an application at Exh.34 and made a request for framing of the issue which reads as under:

> "Whether the plaintiff no.1 proves that she is legally wedded wife of deceased Ramling and Plaintiff no.2 is her daughter begotten from

the deceased Ramling"

The First Appellate Court has held in its order that though no specific issue in that regard was framed by the trial Court, the issue infact had been addressed in the judgment and a categorical finding has been recorded that plaintiff no.1 is the wife of deceased Ramaling and plaintiff no.2 is the daughter begotten from the marriage. The Appellate Court is conscious of the fact that no specific issue was framed by the trial court, but the same has been dealt with and a finding was recorded thereon. The Appellate Court is bound to consider the said issue while deciding the appeal on merit. In this view of the matter, no interference with the impugned order passed by the Ad-hoc District Judge, Solapur is called for. Hence the writ petition is summarily dismissed.

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